



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 09 2007

REPLY TO THE ATTENTION OF:  
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8931 9462

Mr. Ronald Zumstein  
Vice President, Health, Safety & Environment  
Albemarle Corporation  
451 Florida St.  
Baton Rouge, LA 70801

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0035

Dear Mr. Zumstein:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on July 9, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$26,000 is to be paid in the manner prescribed in paragraphs 35 and 36. Please be certain that the number **BD 2750745P035** and the docket number are written on both the transmittal letter and on the check. Payment is due by August 8, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Joseph G. Lukascyk  
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2007-0035</b>
	)	
<b>Albemarle Corporation</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Baton Rouge, Louisiana</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
<b>Respondent.</b>	)	<b>Act, 7 U.S.C. § 136l(a)</b>
<hr/>	)	

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Chief of the Chemicals Management Branch, United States Environmental Protection Agency (U.S. EPA), Region 5. The authority to settle this matter has been delegated to the Director of the Land and Chemicals Division, U.S. EPA, Region 5.

3. Respondent is Albemarle Corporation (Albemarle), a corporation doing business at 451 Florida Street, Baton Rouge, Louisiana, 70801.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

**Statutory and Regulatory Background**

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of U.S. EPA. These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states, in pertinent part, that “all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations (40 C.F.R. Part 156.10) promulgated thereunder by the Administrator before being permitted entry into the United States.”

12. Sections 17(c) of FIFRA, 7 U.S.C. § 136o(c) and 19 C.F.R. § 12.112 states, in pertinent part, that “an importer desiring to import pesticides into the United States shall submit

to the Administrator a Notice of Arrival of Pesticides or Devices prior to the arrival of the shipment to the United States.”

13. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), states that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.

14. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” as the written, printed, or graphic matter on, or attached to the, pesticide or device or any of its containers or wrappers.

15. Section 2(q)(2)(C), 7 U.S.C. § 136(q)(2)(C), states, in pertinent part, that a pesticide is misbranded if there is not affixed to its container a label.

16. 40 C.F.R. Section 156.10(a)(1) states, in pertinent part, that every pesticide product shall bear a label.

17. 40 C.F.R. Section 156.10(a)(4) states, in pertinent part, that the label shall appear on or be securely attached to the immediate container of the pesticide product.

18. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

19. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3, and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

20. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

**Factual Allegations and Alleged Violations**

21. Respondent is, and was at all times relevant to this Complaint, a corporation and, therefore, is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. Panalpina, Inc., located at 19409 Kenswick Drive, Humble, Texas 77338, is a broker/agent for Respondent.

23. On or about May 11, 2007, Respondent’s broker/agent, Panalpina, Inc., submitted a Notice of Arrival of Pesticides and Devices (NOA), EPA Form 3540-1, to U.S. EPA for the import shipment of a product, “ALBROM 100P-C/100T,” EPA Reg. No. 3377-34.

24. Albemarle, was listed as the importer of the May 11, 2007 shipment.

25. On May 16, 2007, the U.S. EPA detained the import shipment that was imported by Albemarle on May 11, 2007, for inspection.

26. On May 31, 2007 and June 1, 2007, an investigator employed by the U.S. EPA and duly authorized to conduct inspections under FIFRA, conducted inspections of the import shipment imported by Respondent on May 11, 2007 at Global CFS, 860 Foster Avenue, Bensenville, Illinois 60101, in order to determine compliance with the provisions of FIFRA.

27. During the inspections, the inspector saw that the import shipments consisted of two different pesticidal products: “Albrom 100 PC,” EPA Reg. No. 3377-61 and “Albrom 100T,” EPA Reg. No. 3377-72.

28. The products “Albrom 100PC” and “Albrom 100T” are pesticides as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(s).

29. On May 11, 2007, Respondent failed to file a NOA for “Albrom 100 PC,” EPA Reg. No. 3377-61 prior to the arrival of the shipment of “Albrom 100 PC,” EPA Reg. No. 3377-61 to the United States, as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c) and 19 C.F.R. § 12.112 which constitutes an unlawful act according to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

30. On May 11, 2007, Respondent failed to file a NOA for “Albrom 100T,” EPA Reg. No. 3377-72 prior to the arrival of the shipment of “Albrom 100T,” EPA Reg. No. 3377-72 to the United States, as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c) and 19 C.F.R. § 12.112 which constitutes an unlawful act according to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

31. Respondent’s unlawful acts subject Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(c) of FIFRA, 7 U.S.C. § 136l(a) for each violation.

32. During the inspection, the inspector also observed that every container of “Albrom 100 PC” and “Albrom 100T” did not bear a label on it in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, and 40 C.F.R. 156.10, which constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

33. Respondent’s unlawful acts subject Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(c) of FIFRA, 7 U.S.C. § 136l(a) for each violation.

### Civil Penalty

34. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$26,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$26,000 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251 - 7531

The check must note the following: the case name, the docket number of this CAFO and the billing document number.

36. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Joseph G. Lukascyk (DT-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Nidhi O'Meara (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

37. This civil penalty is not deductible for federal tax purposes.

38. If Respondent does not pay the civil penalty timely, U.S. EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

40. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

41. Respondent shall immediately submit to the U.S. EPA properly completed Notices of Arrival for the two pesticide products that it intends to import into the United States.



42. Respondent shall immediately contract with an EPA registered establishment, within the Chicago land area, to have the two import pesticide products labeled in accordance with FIFRA and its regulations.

43. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

44. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws, and regulations.

45. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for FIFRA.

46. The terms of this CAFO bind Respondent and its successors, and assigns.

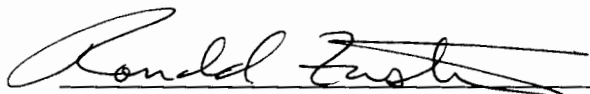
47. Each person signing this agreement certifies that he or she has the authority to sign this agreement for the party whom he or she represents and to bind that party to its terms.

48. Each party agrees to bear its own costs and attorney's fees, in this action.

49. This CAFO constitutes the entire agreement between the parties.

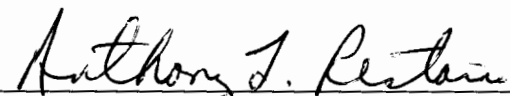
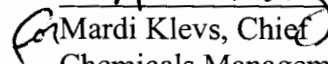
**Albemarle Corporation, Respondent**

June 22, 2007  
Date


  
Ronald Zumstein  
Vice President, Health, Safety &  
Environment

**United States Environmental Protection Agency, Complainant**

6/26/07  
Date

  
For  Mardi Klevs, Chief  
Chemicals Management Branch  
Land and Chemicals Division

June 28, 2007  
Date

  
Margaret M. Guerriero, Director  
Land and Chemicals Division

**FIFRA-05-2007-0035**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7-5-07  
Date

*fa* *M. Gade*  
Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**FIFRA-05-2007-0035**

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Albemarle Corporation, was filed on July 9, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8931 9462, a copy of the original to the Respondents:

Mr. Ronald Zumstein  
Vice President, Health, Safety & Environment  
Albemarle Corporation  
451 Florida St.  
Baton Rouge, LA 70801

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Nidhi K. O'Meara, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket.No. FIFRA-05-2007-0035